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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,945	02/16/2005	Farhad Parhami	58086-241892	3129
26694	7590	08/29/2009		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998				
EXAMINER				
LEAVITT, MARIA GOMEZ				
ART UNIT		PAPER NUMBER		
1633				
MAIL DATE		DELIVERY MODE		
08/20/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/524,945

Applicant(s)

PARHAMI, FARHAD

Examiner

MARIA LEAVITT

Art Unit

1633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3, 6-8, 11, 12, 15-17, 19-21, 23-26 and 28
Claim(s) withdrawn from consideration: 4, 5, 9, 10, 18, 22, 27 and 29-41.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Maria Leavitt/
Primary Examiner, Art Unit 1633

Continuation of 11, does NOT place the application in condition for allowance because: Applicants' arguments are essentially the same as the one submitted in the office action filed on 09-11-2008. Applicants basically argue that inhibition of HMG-CoA reductase by statin and osteoblastic differentiation as disclosed by Paralkar, useful in promoting bone growth, is coincidental. Thus, Applicants allege that absent the establishment of a casual link between the ability of an agent to inhibit HMG-CoA reductase and the ability of the agent to induce osteoblastic differentiation, there would be no motivation for a skilled worker to substitute an oxysterol for the statins of the Paralkar reference with a reasonable expectation of success.

The examiner refers applicants to the arguments already of record as set forth at pages 3-5 of the office action filed on 03-23-2009.

Additionally, non patent literature publication by Szallasi et al., (2002, Am J Clin Pathol, pp. 1997-2003) constitute evidence that is newly presented. As the non patent literature publication has not been entered and applicants' arguments are based on the non patent literature publication (see page 10 of 12 of Applicants' remarks filed on 07-23-2009), Applicants' arguments are not found persuasive. Accordingly, 1-3, 6-8, 11-17, 19-21, 23-26 and 28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Paralkar et al., US Publication no. 20040176423 (Date of Publication September 9, 2004), in view of Parish et al., (1995, Lipids, pp. 247-251) and further in view of Wang et al. (Clinical Orthopaedics and Related Research, 2000, 370: 295-310)..